

REMARKS

In the Office Action dated May 25, 2011, the Examiner asserted that:

Applicants election of group I claims 1-39 and 69 and the elected species in the reply filed 05/17/2006 is acknowledged. However upon consideration the examiner has determined that another species requirement for the bioactive agent is necessary. Furthermore different mutually exclusive species of bioactive agents are now claimed in separate claims by amendment.

Applicants note that the Examiner's specific acknowledgment regarding Applicants election of claims 1-39 and 69 indicated that "Applicants election of group I claims 1-39 and 69 and the elected species in the reply filed 05/17/2006 is acknowledged." However, the reply was filed on August 15, 2006 in response to the Restriction Requirement mailed on May 17, 2006.

The Examiner further required, under 35 U.S. C. 121, election of a single disclosed specie, or a single grouping of patentably indistinct species. Specifically, the Examiner asserted that:

This application contains claims directed to the following patentably distinct species: bioactive agents. The species are independent or distinct because each species recites mutually exclusive characteristics, in this instance different unrelated structure.

In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, the pending claims are generic.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply: each individual structure could require a separate individual search presenting an undue burden on the examiner.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or a grouping of patentably indistinct species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit

evidence or identify such evidence now of record showing them to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicants hereby elect the species of a component of an extracellular matrix of independent Claims 1 and 69 with traverse. All claims other than claims 113 and 115 read on the elected species.

Applicants respectfully assert that examination of the asserted species will require search of essentially the same art and will not place an undue burden upon the Examiner. In the interest of expedient and efficient prosecution, Applicants respectfully request that the asserted species be examined together. In the alternative, Applicants respectfully request that at least the species of an extracellular matrix and a component of an extracellular matrix be examined together.

Applicants respectfully requests that the Examiner indicate the allowability of the claims and arrange for an official Notice of Allowance to be issued in due course.

Respectfully submitted,
ERIC J. BECKMAN et al.

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By /Henry E. Bartony, Jr., Reg. No. 34,772/
Henry E. Bartony, Jr., Esq.
Reg. No. 34,772

Bartony & Associates, LLC
P.O. Box 910
Butler, PA 16003-0910

Tel: 412/253.2610
Fax: 412/254.8088
Attorney of Record